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**Testimony to the Senate Judiciary Committee
In Support of HB2081
March 6, 2013**

Chairman King and Committee Members,

This bill simply makes two amendments to the existing forfeiture laws. First, it adds two statutes to the list of crimes that may result in forfeiture actions. Second, it clarifies what is included in electronic communication devices covered by the forfeiture act and applies the act to electronic devices used in any of the listed crimes. It does not make any change to the general forfeiture procedures and protections already in place in the Kansas forfeiture act.

The two crimes we are asking to be added are KSA 21-5508, Indecent Solicitation of a Child and Aggravated Indecent Solicitation of a Child; and KSA 21-5510 Sexual Exploitation of a Child. These crimes are frequently committed with the use of electronic communication devices including computers, smart phones, and tablet devices. As the titles of the crimes indicate these crimes both involve attacks on our children. Clearly large value forfeitures under these crimes would be the exception. Although feasibly violations where vehicles or buildings owned by the perpetrator and used to commit the crime could result in the forfeiture of those items. If the perpetrator is using these acts for financial gains those assets would also be subject to forfeiture. The greatest advantage this enhancement provides is a path to remove from the offender tools commonly used in their exploitation of our children. For your convenience I have attached a copy of the two statutes.

Passage of this bill will provide the criminal justice system the use of forfeiture to remove the tools these deviant criminals typically use in the perpetration of these crimes. On behalf of the Kansas Association of Chiefs of Police and the Kansas Peace Officers Association, we urge you to recommend this bill favorably for passage.

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KSA 21-5508. Indecent solicitation of a child; aggravated indecent solicitation of a child.

- (a) Indecent solicitation of a child is enticing, commanding, inviting, persuading or attempting to persuade a child 14 or more years of age but less than 16 years of age to:
 - (1) Commit or to submit to an unlawful sexual act; or
 - (2) enter any vehicle, building, room or secluded place with intent to commit an unlawful sexual act upon or with the child.
- (b) Aggravated indecent solicitation of a child is enticing, commanding, inviting, persuading or attempting to persuade a child under the age of 14 years to:
 - (1) Commit or submit to an unlawful sexual act; or
 - (2) enter any vehicle, building, room or secluded place with the intent to commit an unlawful sexual act upon or with the child.
- (c) (1) Indecent solicitation of a child is a severity level 6, person felony.
 - (2) Aggravated indecent solicitation of a child is a severity level 5, person felony.
- (d) It shall not be a defense that the offender did not know or have reason to know that the sexual act was unlawful.

History: L. 2010, ch. 136, § 72; July 1, 2011.

21-5510. Sexual exploitation of a child.

- (a) Sexual exploitation of a child is:
 - (1) Employing, using, persuading, inducing, enticing or coercing a child under 18 years of age, or a person whom the offender believes to be a child under 18 years of age, to engage in sexually explicit conduct with the intent to promote any performance;
 - (2) possessing any visual depiction of a child under 18 years of age shown or heard engaging in sexually explicit conduct with intent to arouse or satisfy the sexual desires or appeal to the prurient interest of the offender or any other person;
 - (3) being a parent, guardian or other person having custody or control of a child under 18 years of age and knowingly permitting such child to engage in, or assist another to engage in, sexually explicit conduct for any purpose described in subsection (a)(1) or (2); or
 - (4) promoting any performance that includes sexually explicit conduct by a child under 18 years of age, or a person whom the offender believes to be a child under 18 years of age, knowing the character and content of the performance.
- (b) (1) Sexual exploitation of a child as defined in:
 - (A) Subsection (a)(2) or (a)(3) is a severity level 5, person felony; and
 - (B) subsection (a)(1) or (a)(4) is a severity level 5, person felony, except as provided in subsection (b)(2).
- (2) Sexual exploitation of a child as defined in subsection (a)(1) or (a)(4) or attempt, conspiracy or criminal solicitation to commit sexual exploitation of a child as defined in subsection (a)(1) or (a)(4) is an off-grid person felony, when the offender is 18 years of age or older and the child is under 14 years of age.
- (c) If the offender is 18 years of age or older and the child is under 14 years of age, the provisions of:
 - (1) Subsection (c) of K.S.A. 2012 Supp. 21-5301, and amendments thereto, shall not apply to a violation of attempting to commit the crime of sexual exploitation of a child as defined in subsection (a)(1) or (a)(4);

- (2) subsection (c) of K.S.A. 2012 Supp. 21-5302, and amendments thereto, shall not apply to a violation of conspiracy to commit the crime of sexual exploitation of a child as defined in subsection (a)(1) or (a)(4); and
 - (3) subsection (d) of K.S.A. 2012 Supp. 21-5303, and amendments thereto, shall not apply to a violation of criminal solicitation to commit the crime of sexual exploitation of a child as defined in subsection (a)(1) or (a)(4).
- (d) As used in this section:
- (1) "Sexually explicit conduct" means actual or simulated: Exhibition in the nude; sexual intercourse or sodomy, including genital-genital, oral-genital, anal-genital or oral-anal contact, whether between persons of the same or opposite sex; masturbation; sado-masochistic abuse with the intent of sexual stimulation; or lewd exhibition of the genitals, female breasts or pubic area of any person;
 - (2) "promoting" means procuring, transmitting, distributing, circulating, presenting, producing, directing, manufacturing, issuing, publishing, displaying, exhibiting or advertising:
 - (A) For pecuniary profit; or
 - (B) with intent to arouse or gratify the sexual desire or appeal to the prurient interest of the offender or any other person;
 - (3) "performance" means any film, photograph, negative, slide, book, magazine or other printed or visual medium, any audio tape recording or any photocopy, video tape, video laser disk, computer hardware, software, floppy disk or any other computer related equipment or computer generated image that contains or incorporates in any manner any film, photograph, negative, photocopy, video tape or video laser disk or any play or other live presentation;
 - (4) "nude" means any state of undress in which the human genitals, pubic region, buttock or female breast, at a point below the top of the areola, is less than completely and opaquely covered; and
 - (5) "visual depiction" means any photograph, film, video picture, digital or computer-generated image or picture, whether made or produced by electronic, mechanical or other means.

History: L. 2010, ch. 136, § 74; L. 2011, ch. 100, § 16; July 1.